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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) 2003P08062US
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature_____</p> <p>Typed or printed name _____</p>		<p>Application Number 10/673,846</p> <p>Filed 09/29/2003</p> <p>First Named Inventor Mark Bernard Hettish</p> <p>Art Unit 2161</p> <p>Examiner Kavita Padmanabhan</p>

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)
- attorney or agent of record.  
Registration number \_\_\_\_\_.
- attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 45,371

/Randolph P. Calhoune/

Signature

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Typed or printed name

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Telephone number

October 29, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of \_\_\_\_\_ forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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) Confirmation No.: 3718  
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) Group Art Unit: 2161  
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) Examiner: Kavita Padmanabhan  
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) **REASONS IN SUPPORT OF PRE-**  
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**APPEAL BRIEF REQUEST FOR**  
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**REVIEW**  
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Mail Stop AF (via EFS)  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant submits the following reasons in support of the Pre-Appeal Brief  
Request for Review filed herewith:

**Reasons** begin on the following page of this paper.

## REASONS

Applicant submits the following reasons as evidence of clear error in the outstanding final rejection of claims 1 – 7 and 15 – 17.

Reconsideration is respectfully requested.

Claims 1 – 7 and 15 – 17 were rejected under 35 U.S.C. 102(b) as being anticipated by Diacakis et al. U.S. Publication 2002/0116336, hereinafter "Diacakis". This rejection is traversed as outlined below.

Applicant notes representative claim 1 relates to a method including interfacing an identity oriented context application that represents a context of an identity based on an availability or state of the identity with a device oriented context application that determines an availability or state of a device associated with the identity, where the identity is a person or a group of persons, determining, by said device oriented context application, a device oriented context for a specific device associated with the identity, wherein said device oriented context provides an availability status of said specific device, determining, by said identity oriented context application, an identity oriented context for said identity, wherein said identity oriented context provides an availability status of said identity, and determining an availability rule associated with said identity, the availability rule governing when or how the identity is available, when or how the identity can be contacted by other identities, how or when the identity can be contacted based on the identity oriented context of the identity, and how or when the identity can be contacted based on the device oriented context of the identity. The method of claim 1 further includes determining, for a specific time, a true availability of said identity based, at least in part, on said determined device oriented context for said specific device associated with said identity, said determined identity oriented context and said determined availability rule at said specific time, and providing data indicative of said true availability of said identity.

Applicant thus claims interfacing an identity oriented context application with a device oriented context application. The claimed identity oriented context application

represents a context of an identity based on an availability or state of the identity, whereas the claimed device oriented context application determines an availability or state of a device associated with the identity. That is, the claimed “identity oriented context application” is related or referenced (i.e., oriented) to an availability or state of an identity, whereas the claimed “device oriented context application” is related or referenced (i.e., oriented) to an availability or state of a device.

Applicant notes that the availability of a device associated with the identity is provided by the device oriented context application, as stated in the Specification at paragraph [0024] where Applicant discloses, “[A]n identity may have one or more associated devices. ...Each device may have an associated device context. ... Context for a device may describe the work or non-work state, and/or the availability or non-availability state, that the device is in.”

Applicant respectfully notes claims 15 (reciting an article of manufacture) and claim 16 (reciting an apparatus) are worded similar to claim 1 regarding the claimed device oriented context application.

Applicant respectfully submits that the cited and relied upon Diacakis does not disclose or suggest, at least, the claimed device oriented context application and mapping a new device oriented context to the identity oriented context. Applicant further submits the Office has clearly erred in asserting the cited and relied upon Diacakis does disclose these aspects.

Applicant notes the Examiner maintains the rejection of the claims on the basis that Diacakis’ disclosed presence and availability (P&A) management server 12 that is explicitly related to determining the presence and availability of an individual is equivalent to the claimed “device oriented context application”, as stated in the Final Office Action dated July 29, 2009 (hereinafter, FOA) at pages 2 – 3. However, the Office’s characterization of Diacakis is mistaken and factually unsupported by the Diacakis disclosure.

Applicant submits that Diacakis factually discloses a P&A management server 12 that includes "a presence detection engine 18 and an availability management engine 20". (Diacakis, para. [0024], ln. 7 – 10) The presence detection engine 18 and the availability management engine 20 together form the P&A management server 12 and cooperate to provide the functionality of determining the *presence and availability of an individual* to the P&A management server 12. Applicant notes that Diacakis states throughout the entirety of its disclosure that the purpose and function of the disclosed methods and systems therein is to determine the presence and availability of an individual (i.e., identity or person).

Applicant requests the Office to reference the Amendment and Response filed with the Office on September 29, 2009, at page 9, paragraphs 4 and 5 where Applicant discusses Diacakis, paragraphs [0026] and [0027] that explicitly defines the terms "presence" and "availability" in the context of "the ability of *an individual* to access a particular communications network" and "the willingness of *an individual* who is present on one or more communications networks to be reached by one or more persons", respectively. That is, both the presence detection engine 18 and the availability management engine 20 are explicitly defined by Diacakis in relation to, with reference to, and "oriented" to *an individual*. Neither the Diacakis defined presence detection engine 18 nor the availability management engine 20 are disclosed in relation to, with reference to, and "oriented" to a device. Therefore, it is clear that Diacakis fails to disclose or suggest the claimed aspect of "device oriented context application that determines an availability or state of a device associated with the identity".

Applicant further submits that any attempt to expand the meaning of the terms "presence" and "availability" beyond the specific definitions provided by Diacakis would be impermissible, erroneous, and counter to the plain meaning and scope of the Diacakis reference.

Diacakis' presence detection engine 18, as explicitly disclosed and defined by Diacakis, provides a *presence of an individual*. The fact that the individual may be present on a network or a device does not alter the fact that Diacakis provides a

presence of the individual. It is the presence of the individual that is determined by Diacakis, not the presence or availability of the network or device. (See Diacakis, paragraphs [0038] and [0040]) Based on the *explicit* disclosure of Diacakis, it is clear that the Diacakis P&A server 12 determines the presence of an individual based on the presence detection engine's determination of the individual's presence on a network and the availability management engine's determination of the individual's availability based on the individual's presence information from presence engine 18 and additional information about the individual. Without question, Diacakis' presence detection engine 18 provides presence information about the individual. The presence information about the individual from the presence detection engine 18 is used by the availability management engine 20, in combination with the individual's rules and preferences, to determine the individual's availability. The individual's rules and preferences may determine or control how the individual's presence information from the presence detection engine is classified or characterized.

Therefore, it is seen that both the presence detection engine 18 and the availability management engine 20 using individual presence information from the presence engine 18 relate to a presence (i.e., the ability of an individual to access a particular communications network) and availability of an individual.

Contrary to the assertions in the FOA, there is no disclosure or suggestion that the asserted Diacakis presence detection engine 18 is the same as, analogous to, or equivalent to the claimed "device oriented context application that provides an availability of a device".

Applicant reiterates Diacakis provides numerous examples of the presence detection engine 18 providing the individual's presence on different networks. Applicant incorporates the arguments of record related to Diacakis' extensive disclosed examples of the identity (i.e., individual) oriented application therein – the presence detection engine 18. Accordingly, Applicant will not repeat the citations to Diacakis at paragraphs, [0034], [0038], and [0040] – [0044].

Applicant submits that both the presence detection engine 18 and the availability management engine 20 disclosed by Diacakis relate to the presence and availability of an individual. No availability of a device is disclosed as being determined by Diacakis. That is, Diacakis fails to disclose or even suggest the claimed device oriented context application.

Applicant respectfully submits that claims 1, 15, and 16 are not anticipated by Diacakis. Applicant further submits that claims 2 – 7 and 17 are also patentable over Diacakis for depending from an allowable base claim.

Therefore, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 1– 7 and 15 – 17 under 35 USC 102.

#### **C O N C L U S I O N**

Accordingly, Applicant respectfully requests allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-5985.

Respectfully submitted,

October 29, 2009

Date

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